APPEAL NO. 041455
FILED AUGUST 2, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on May 13, 2004. The hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to and include reflex sympathic dystrophy (RSD) of the right upper extremity and an injury to the right shoulder.

The claimant appeals, citing the reports of several doctors and attaching to his appeal a "Rebuttal Letter" from his current treating doctor. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

First addressing the report (Rebuttal Letter) of Dr. M dated June 9, 2004 (almost a month after the CCH), the Appeals Panel does not normally consider evidence submitted for the first time on appeal. *See* Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ) for the standard which might require a remand. We do not consider a remand appropriate as Dr. M's report is cumulative of his other reports in the record. Another letter report attached to the claimant's appeal had been admitted into evidence as part of Claimant's Exhibit No. 17.

The claimant, a maintenance man, sustained a compensable injury on _____, lifting a 60-pound bucket of material. Initial medical reports beginning on December 4, 2001, focus on the right elbow and arm. The first mention of pain in the right shoulder appears to be in a report dated September 16, 2002, by a referral doctor and the first mention of RSD is in a report dated April 2, 2002, by another referral doctor. EMG and MRI testing was normal.

The claimant has been seen by a number of doctors (at least 10) and the medical evidence, particularly of RSD is conflicting. Dr. H, a Texas Workers' Compensation Commission-required medical examination doctor states that "there is no evidence of RSD" and that he does "not believe that we can attribute [the claimant's] shoulder problems to the work injury of _____." The hearing officer's determination is supported by the evidence.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within his province

as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **NORTH AMERICAN SPECIALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Elaine Chaney
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge